COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

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Investigation by the Department on its own)

Motion as to the propriety of the rates and)

charges set forth in M.D.T.E No. 17, filed with)

the Department on May 5, 2000 to become) D.T.E. 98-57, Phase III

effective June 4 and June 6, 2000 by New)

England Telephone and Telegraph Company)

d/b/a Bell Atlantic - Massachusetts)

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VERIZON MASSACHUSETTS' REPLY COMMENTS

Verizon Massachusetts ("Verizon MA") files this response to comments regarding Verizon MA's Motions for Partial Reconsideration, Clarification and Deferral of the Department's September 29, 2000, Order and to other parties' pending Motions for Reconsideration.(1) As demonstrated below, none of the parties raise arguments that warrant denial of Verizon MA's Motions. Accordingly, the Department should grant those Motions.

I. ARGUMENT

A. The Record Evidence Clearly Supports Reconsideration of the Department's Requirement of a 40 Business-Day Collocation Augment Interval.

Parties contend that Verizon MA does not satisfy the applicable standard of review because its Motion for Partial Reconsideration allegedly reargues facts pertaining to the collocation augment interval that were considered and rejected by the Department. Those contentions are wrong. In its Motion, Verizon MA demonstrated that the Department erred in rejecting the application of the standard 76 business-day collocation provisioning interval in favor of a 40 business-day interval for collocation augments involving line sharing arrangements. The Department's error is based on its misunderstanding of two key record request responses, upon which the Department relied in making its decision on this issue.

In its Order, the Department stated, in pertinent part, that

[w]hile Verizon is critical of statements made by CLEC witnesses, that only a few days are required to install additional cabling and splitters, the Department need not rely on such statements to find independently that a 76 business-day interval is inappropriate. Rather, we need only look to Verizon's responses to two record requests to support this determination (see RR-CVD-6, Supp.; RR-DTE-11).

Order at 60.

As explained in detail in Verizon MA's Motion, this is a faulty premise because these two record request responses are not comparable, as the Department incorrectly assumes, but instead depict different levels of detail for the activities involved in collocation provisioning versus collocation augmentation. Therefore, it is totally inappropriate for the Department to have relied on these responses as the basis for comparing the nature and magnitude of Verizon MA's activities for collocation provisioning and collocation augmentation, and then erroneously conclude that the collocation augment interval should be considerably shorter.

At the Department's request, Verizon MA supplemented its reply to RR-CVD-6 to provide sub-intervals for the standard collocation provisioning arrangement and, in the process, identified more than 100 activities associated with that arrangement. The Department did not, however, request that Verizon MA supplement RR-DTE-11 to provide the same level of detail for the standard collocation augmentation arrangement for line sharing. Because the two responses contain fundamentally different levels of detail regarding the activities associated with the respective arrangements, they cannot be compared for the purpose of assessing all activities required for the two arrangements.(2) Simply stated, the two responses do not establish that the work activities differ between the two arrangements, and therefore, the Department could not reasonably conclude, on the record before it, that RR-DTE-11 demonstrates a "streamlined approach to augmentation." Order at 67. Moreover, RR-DTE-11 does not justify a dramatic reduction in the standard 76 business-day interval by almost 50 percent for line sharing augment requests. Order at 67; Tr. 2:338-340. Accordingly, the Department's mistake in relying on inapposite data to establish a 40 business-day interval as the appropriate standard for completing a collocation augmentation for line sharing unquestionably meets the applicable standard of review for reconsideration.(3)

The Department's ruling on this matter is also in error because it ignores Verizon MA's actual experience with collocation augmentations. Of the 233 completed augment arrangements that Verizon MA completed in the first half of 2000, the average interval was 68 business days. Exh. VZ-MA 4, at 23. The range of days supporting that average augment interval is 49 to 89 business days. See RR-RLI-6; Tr. 2:369. No party disputed the accuracy of Verizon MA's actual data, and no party showed that there were any deficiencies in the actual work efforts. This data clearly reflects the best evidence available for the Department to determine a reasonable and attainable standard interval. Therefore, the 40 business-day interval prescribed by the Department is an unrealistic due date even under a "best case" scenario.

Some parties contend that Verizon MA's Motion should be denied based on recent decisions in Pennsylvania and New York where 30 and 45 business-day intervals, respectively, have been ordered. That argument is unfounded. Just as Verizon previously filed exceptions to the Maryland Public Service Commission's decision requiring a 45 business-day interval for line sharing related collocation augments, Verizon will likely take similar action in Pennsylvania and New York. Accordingly, the recent Pennsylvania and New York decisions do not necessarily represent the final word on standard collocation augmentation intervals pending Verizon's determination whether to seek reconsideration in those jurisdictions.

Finally, if the Department grants Verizon MA's Motion for Partial Reconsideration regarding the application of the 40 business-day interval for collocation augmentations for line sharing, as it should, the Department should also reconsider its ruling that Verizon MA should submit line-sharing specific cost studies to

support its nonrecurring Application Augment Fee and nonrecurring Engineering Implementation Charge. This is appropriate because of the obvious nexus between these two issues. Clearly, the Department directed Verizon MA to provide line-sharing specific cost studies based on its implicit assumption that if less work and less time are involved in completing line-sharing related collocation augmentations, then the costs would also change. However, as demonstrated above, because the information relied on by the Department does not support the conclusion that any practical distinction in the work required for collocation provisioning versus collocation augmentation exists, a cost difference would be unlikely. Accordingly, the Department's requirement that Verizon MA develop line-sharing specific cost studies for its nonrecurring Application Augment Fee and nonrecurring Engineering Implementation Charge is unwarranted, and Verizon MA's Motion for Partial Reconsideration should be granted on this related issue as well.

B. The Department's Disallowance of Verizon MA's Proposed Charges for Loop Conditioning, Loop Qualification, and Engineering Queries Is Unjustified and Unreasonable Based on State and Federal Precedent.

Contrary to parties' claims, the Department has misapplied its decision in the Consolidated Arbitrations to dismiss Verizon MA's proposed charges for mechanized and manual loop qualification, engineering queries and loop conditioning. The Department's error provides sufficient justification for reconsideration of the Department's decision under Massachusetts law.

In the Consolidated Arbitrations, the Department ruled that Verizon MA should utilize the approved TELRIC methodology based on an all-fiber-feeder network for recurring and nonrecurring charges. In that proceeding, the rates and charges in question related to voice grade services. At issue here is xDSL services, which undisputedly must be provisioned using a copper network. Accordingly, the Department's rationale that Verizon MA's underlying xDSL cost study based on copper loops is inconsistent with the approved TELRIC methodology in the Consolidated Arbitrations is wrong. Verizon MA's cost studies in the Consolidated Arbitrations did not contemplate xDSL services, and it is unreasonable for the Department to extrapolate its findings in that case to the facts in this proceeding.

Parties vigorously object to reconsideration of this erroneous Department ruling because it would eliminate the application of any loop qualification, loop conditioning and engineering query costs despite the fact that Verizon MA would be required to perform this substantial work. This is not only grossly unfair and confiscatory, but also contravenes the FCC rules, which recognize that xDSL services must use copper loops and that incumbent local exchange carriers ("ILECs") are entitled, as a matter of federal law, to recover the costs incurred to condition those copper loops to support xDSL services. Verizon MA Motion at 9-11. Moreover, no other state has required the elimination of loop qualification, loop conditioning and engineering query charges in direct contravention of the FCC rules. In fact, the New York Public Service Commission ("NYPSC") approved those rates based on a copper-based cost study for xDSL services. Verizon MA Motion at 11.

Covad asserts that in New York, Verizon recently proposed a TELRIC cost study for xDSL services based on an all-fiber feeder network. Covad Comments at 7. That is incorrect. In its December 17, 1999, and May 26, 2000, decisions issued in Case 98-C-1357, the NYPSC repeatedly ruled that copper loop plant is the appropriate construct for xDSL services, and thus concluded that Verizon NY's xDSL cost studies using a copper-based network was properly forward-looking because the very nature of xDSL technology precludes it from being costed on an all-fiber feeder basis as used in the approved TELRIC studies in New York. Verizon MA Motion at 11.

What Covad, in fact, alludes to is Verizon NY's proposal in Case 98-C-1357 to charge no more than the analog rate for a DSL loop. This does not, however, change Verizon NY's cost study, which is based on a copper loop construct deemed by the NYPSC as the appropriate network assumption for xDSL technology. Accordingly, the Department should reconsider its decision and find that because DSL requires copper plant, the network assumption used in the Consolidated Arbitrations would not be dispositive of

the appropriate forward-looking technology for loops designed to support xDSL transmission. As determined by the NYPSC, a separate cost analysis is required for DSL loops to reflect the copper network that will actually be utilized for the services. This would not conflict with the Department approved costing methods, and is fully supported by the FCC's rulings on DSL services. Thus, Verizon MA's cost study is appropriate, and the Department should approve the proposed rates on reconsideration.

In addition, the Department's conclusion that no loop qualification or loop conditioning would be required if an all-fiber-feeder network were assumed is erroneous because both bridged tap and ISDN additions are applicable in either fiber or copper network design. Order at 105; Verizon MA Motion at 11-12. Likewise, even assuming a fiber-feeder network design, CLECs would need to obtain loop qualification information through the mechanized loop qualification database, or manual loop qualification process or engineering query process to determine certain loop characteristics (e.g., cable length and presence and location of bridged tap), which affects what DSL services they might be able to provide over a given cable pair. Accordingly, regardless of whether the Department presumes a copper or all fiber-feeder network, Verizon MA is entitled as a matter of law to recover its costs for loop conditioning, loop qualification (manual or mechanized) and engineering queries (e.g., loop make-up), where applicable.(4)

Finally, DBC disagrees with Verizon MA's position that if the Department upholds its finding that the cost study for xDSL services must be based on an all fiber-feeder network, then Verizon MA should not be allowed to charge appropriate rates to cover the costs associated with providing xDSL loops over fiber feeder. DBC Comments at 6. This is unreasonable and would allow CLECs to have it both ways. Contrary to DBC's claims, Verizon MA is not seeking approval of its existing unbundled DS1 rate as an appropriate surrogate rate in its Motion for Partial Reconsideration, but rather has presented it as a reasonable estimate. Verizon MA Motion at 12-13. What Verizon MA is seeking is the ability to propose a rate for unbundled DSL loops on 100 percent fiber feeder and, if necessary, develop forward-looking supporting cost studies.(5) This would ensure that Verizon MA is able to recover its costs derived using the fiber-based cost methodology mandated by the Department.

C. Reconsideration of the Department's Decision to Incorporate Covad's Specific "Plug and Play" Options Would Allow Verizon MA to Propose An Offering That Meets CLEC Needs and Appropriately Considers Verizon MA's Network Infrastructure and FCC Requirements.

Parties contend that Verizon MA must be required to file a "plug and play" option in its compliance tariff, and that no delay is warranted. Their contentions are unjustified.

In its Motion for Partial Reconsideration, Verizon MA seeks a reasonable modification to the Department's Order to enable the Company the flexibility to develop a wholesale service to provide DSL services over loops served by fiber feeder while taking into account the actual network infrastructure, as well as FCC and Department requirements. In its Order, the Department found that "further investigation is necessary to determine whether some or all of the plug and play options advocated by CLECs are reasonable or whether the Department should restrict Verizon's tariff offering to one type of deployment such as plug and play (see Verizon Reply Brief at 39)." Order at 87. The Department also stated that "[u]pon further investigation, it is possible the Department would agree with Verizon that the legal, technical, and operational issues associated with plug and play are insurmountable." Id. Verizon MA's Motion is consistent with those objectives, and merely seeks to remove the requirement that the Company must submit a "plug and play" tariff option pending the Department's further investigation on its feasibility. Verizon MA Motion at 13-14.

Verizon MA's request for additional time to develop a wholesale tariff offering is also reasonable and, contrary to parties' claims, would have no prejudicial effect on CLECs. As the Department recognized, Verizon MA cannot be ordered to provide

unbundled packet switching (or offer the "plug and play" option) until the four conditions established by the FCC in 47 C.F.R. §51.319(c)(3)(b) are met. Order at 88. Because Verizon MA does not have the legal obligation to provide this as an unbundled network element ("UNE") at this time, Verizon MA's request for additional time to develop a responsive tariff offering would not delay implementation.(6)

Moreover, Verizon MA agrees not to utilize any such arrangement on a retail basis until a wholesale offering is made available to all CLECs in Massachusetts. Verizon MA Motion at 15-16. Offering such arrangements at the same time and subject to the same non-discriminatory rates, terms and conditions would address any potential competitive concerns. Accordingly, there is no reasonable basis for denying Verizon MA's request for additional time to ensure that xDSL service is available to as many customers as practical, including customers served over fiber feeder, as soon as technically and practically feasible. This cannot be achieved by Covad's "plug and play" option, which Verizon MA cannot technically support to provide the services the CLECs request. Verizon MA Motion at 15-16.

D. Contrary to Parties' Claims, There Is No Basis for The Department To Modify or Reconsider Its Decision on "Line Splitting."

In its Comments, WorldCom reiterates its arguments for reconsideration of the Department's decision on line splitting. In addition to its comments filed November 9, 2000, Verizon MA also opposes WorldCom's Motion on the grounds that further action by the Department is unnecessary.

In its Order, the Department stated that

Verizon indicated that it is working with CLECs to resolve technical and operational issues on this matter in the New York collaborative. We expect Verizon to import whatever technical and operational resolutions are reached in New York to Massachusetts (see Exh. VZ-MA-3, at 4, 14, in which Verizon commits to implement in Massachusetts any resolutions reached in the New York collaborative).

Order at 39-40.

Currently, there are ongoing discussions in New York to reach a resolution to deploy a form of line splitting as a result of collaborative efforts by a newly formed line splitting OSS working group. Verizon MA will comply with the Department's directives and implement in Massachusetts any resolution reached in the New York Collaborative once it becomes available. Therefore, there is no need for the Department to reconsider its Order, and WorldCom's Motion must be denied.

II. CONCLUSION

For the foregoing reasons, the parties have raised no justification for denying Verizon's Motions. Accordingly, the Department should grant those Motions.

Respectfully submitted,

VERIZON MASSSACHUSETTS

By its attorney,

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1. 1 The following parties submitted comments on November 9, 2000: AT&T Communications of New England, Inc. ("AT&T"); Covad Communications Company ("Covad"), Digital Broadband Communications Inc. ("DBC"), Massachusetts CLEC Alliance ("CLEC Alliance"), Rhythms Links Inc. ("Rhythms"), and WorldCom, Inc. ("WorldCom"). While those comments generally pertain to Verizon MA's aforementioned Motions, some parties have also addressed certain issues, i.e., line splitting, raised by other pending Motions for Reconsideration. Likewise, Verizon MA addresses those parties' comments in this Reply.

2. 2 The Department on reconsideration may seek to require Verizon MA to supplement RR-DTE-11 to provide a comparable, comprehensive list of sub-intervals for collocation augmentations. This would enable the Department to evaluate the "major milestones" for collocation provisioning and collocation augmentations in RR-CVD-6 and RR-DTE-11, as well as the more detailed description of the underlying activities for both arrangements in supplemental replies to both record request responses.

3. 3 As indicated in Verizon MA's Motion, the Department erroneously relied on these two record request responses to support its determination of a 40 business-day interval in the face of overwhelming record evidence demonstrating that the work that consumes the vast majority of the required time to complete a collocation job is the same whether a new collocation arrangement or augmentation is involved. Verizon MA Motion at 6-7. Because the evidence shows that there is no practical distinction between the work required for new collocation arrangements and for augments in Massachusetts, it is unreasonable to apply a substantially shorter interval for line sharing.

4. 4 To ensure that Verizon MA appropriately recovers its costs of performing loop conditioning and loop qualification services while its Motion is pending, the Department should also grant Verizon MA's request to true-up these applicable charges on reconsideration. Verizon MA Motion at 13.

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5 These rates would include the TELRIC costs of an xDSL capable loop provisioned over fiber feeder, which is not technically equivalent to the unbundled 2-wire or

4-wire analog loops whose rates Verizon MA had proposed adopting for purposes of provisioning unbundled xDSL capable loops or unbundled line sharing. They would also include the loop qualification costs and loop conditioning costs, where applicable, with the possible exception of recovery of costs associated with removal of load coils. Verizon MA Motion at 12.

6. 6 For example, Verizon MA is considering offering a complete service to CLECs, like "Project Pronto" offered by SBC Communications, Inc. Verizon MA Motion at 14-15. Such a new product offering, which may require an FCC waiver, would enable Verizon MA to own, deploy, install, and maintain the line cards at RTs, as well as the rest of the packet switching service, thereby eliminating to significant and costly administrative, technical and operational difficulties associated with Covad's "plug and play" options.